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1.0 Description of the Procedure

1.1 Therapeutic Abortion

A therapeutic abortion is the termination of a pregnancy where fetal heart tones are present at the time of the abortive procedure. The termination of a pregnancy may be induced medically (prostaglandin suppositories, etc.) or surgically (dilation and curettage, etc.). This includes the delivery of a non-viable (incapable of living outside the uterus) but live fetus, if labor was augmented by pitocin drip, laminaria suppository, etc.

1.2 Non-Therapeutic Abortion

A non-therapeutic abortion is any termination of a pregnancy where there has been no manual or surgical interruption of that pregnancy (missed, incomplete, spontaneous, etc.).

2.0 Eligible Recipients

The N.C. Medicaid program covers therapeutic and non-therapeutic abortions for recipients who meet the age and gender restrictions specified by the procedure.

2.1 General Provisions

Medicaid recipients may have service restrictions due to their eligibility category that would make them ineligible for this service.

2.2 EPSDT Special Provision: Exception to Policy Limitations for Recipients under 21 Years of Age

Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) is a federal Medicaid requirement that requires the state Medicaid agency to cover services, products, or procedures for Medicaid recipients under 21 years of age **if** the service is **medically necessary health care** to correct or ameliorate a defect, physical or mental illness, or a condition [health problem] identified through a screening examination** (includes any evaluation by a physician or other licensed clinician). This means EPSDT covers most of the medical or remedial care a child needs to improve or maintain his/her health in the best condition possible, compensate for a health problem, prevent it from worsening, or prevent the development of additional health problems. Medically necessary services will be provided in the most economic mode, as long as the treatment made available is similarly efficacious to the service requested by the recipient's physician, therapist, or other licensed practitioner; the determination process does not delay the delivery of the needed service; and the determination does not limit the recipient's right to a free choice of providers.

EPSDT does not require the state Medicaid agency to provide any service, product, or procedure

- a. that is unsafe, ineffective, or experimental/investigational.
- b. that is not medical in nature or not generally recognized as an accepted method of medical practice or treatment.

Service limitations on scope, amount, duration, frequency, location of service, and/or other specific criteria described in clinical coverage policies may be exceeded or may not apply as long as the provider's documentation shows that the requested service is medically necessary "to correct or ameliorate a defect, physical or mental illness, or a condition" [health problem]; that is, provider documentation shows how the service, product, or procedure will correct or improve or maintain the recipient's health in the best condition possible, compensate for a health problem, prevent it from worsening, or prevent the development of additional health problems.

****EPSDT and Prior Approval Requirements**

- a. If the service, product, or procedure requires prior approval, the fact that the recipient is under 21 years of age does NOT eliminate the requirement for prior approval.
- b. **IMPORTANT ADDITIONAL INFORMATION** about EPSDT and prior approval is found in the Basic Medicaid Billing Guide, sections 2 and 6, and on the EPSDT provider page. The Web addresses are specified below.

Basic Medicaid Billing Guide: <http://www.ncdhhs.gov/dma/medbillcaguide.htm>

EPSDT provider page: <http://www.ncdhhs.gov/dma/EPSDTprovider.htm>

3.0 When the Procedure Is Covered

IMPORTANT NOTE: EPSDT allows a recipient less than 21 years of age to receive services in excess of the limitations or restrictions below and without meeting the specific criteria in this section when such services are **medically necessary health care services** to correct or ameliorate a defect, physical or mental illness, or a condition [health problem]; that is, documentation shows how the service, product, or procedure will correct or improve or maintain the recipient's health in the best condition possible, compensate for a health problem, prevent it from worsening, or prevent the development of additional health problems.

EPSDT DOES NOT ELIMINATE THE REQUIREMENT FOR PRIOR APPROVAL IF PRIOR APPROVAL IS REQUIRED. For additional information about EPSDT and prior approval requirements, see **Section 2.0** of this policy.

3.1 General Criteria

The N.C. Medicaid program covers therapeutic and non-therapeutic abortions when the procedure is medically necessary and provided in accordance with federal and state laws and regulations.

3.2 Criteria for Therapeutic Abortions

The N.C. Medicaid program covers therapeutic abortions when

- a. a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed;
- b. the pregnancy is the result of an alleged act of incest; or
- c. the pregnancy is the result of an alleged act of rape

3.3 Criteria for Non-Therapeutic Abortions

The N.C. Medicaid program covers non-therapeutic abortions when the termination of a pregnancy occurs without any manual or surgical interruption of that pregnancy (missed, incomplete, spontaneous, etc.).

3.4 When an Abortion Is Not Unlawful

N.C. General Status 14-45.1 established provisions that govern the coverage of abortions as follows:

- a. Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be unlawful during the first 20 weeks of a woman's pregnancy, to advise, procure or cause a miscarriage or abortion when the procedure is performed by a physician licensed to practice medicine in North Carolina in a hospital or clinic certified by the Department of Health and Human Services to be a suitable facility for the performance of abortions.
- b. Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be unlawful, after the twentieth week of a woman's pregnancy, to advise, procure or cause a miscarriage or abortion when the procedure is performed by a physician licensed to practice medicine in North Carolina in a hospital licensed by the Department of Health and Human Services, if there is substantial risk that continuance of the pregnancy would threaten the life or gravely impair the health of the woman.

Note: Refer to **Section 4.0** for circumstances when N.C. Medicaid does not cover therapeutic abortions that are lawful.

4.0 When the Procedure Is Not Covered

IMPORTANT NOTE: EPSDT allows a recipient less than 21 years of age to receive services in excess of the limitations or restrictions below and without meeting the specific criteria in this section when such services are **medically necessary health care services** to correct or ameliorate a defect, physical or mental illness, or a condition [health problem]; that is, documentation shows how the service, product, or procedure will correct or improve or maintain the recipient's health in the best condition possible, compensate for a health problem, prevent it from worsening, or prevent the development of additional health problems.

EPSDT DOES NOT ELIMINATE THE REQUIREMENT FOR PRIOR APPROVAL IF PRIOR APPROVAL IS REQUIRED. For additional information about EPSDT and prior approval requirements, see **Section 2.0** of this policy.

4.1 General Criteria

Therapeutic and non-therapeutic abortions are not covered when

- a. the recipient does not meet the eligibility requirements listed in Section 2.0;
- b. the recipient does not meet the criteria listed in Section 3.0;
- c. the procedure duplicates another provider's procedure;
- d. the procedure is experimental, investigational, or part of a clinical trial; or
- e. the federally mandated requirements are not met.

5.0 Requirements for and Limitations on Coverage

IMPORTANT NOTE: EPSDT allows a recipient less than 21 years of age to receive services in excess of the limitations or restrictions below and without meeting the specific criteria in this section when such services are **medically necessary health care services** to correct or ameliorate a defect, physical or mental illness, or a condition [health problem]; that is, documentation shows how the service, product, or procedure will correct or improve or maintain the recipient's health in the best condition possible, compensate for a health problem, prevent it from worsening, or prevent the development of additional health problems.

EPSDT DOES NOT ELIMINATE THE REQUIREMENT FOR PRIOR APPROVAL IF PRIOR APPROVAL IS REQUIRED. For additional information about EPSDT and prior approval requirements, see **Section 2.0** of this policy.

5.1 Therapeutic Abortion

5.1.1 Life-Threatening Conditions

Federal regulations require Medicaid agencies to obtain certification (see **Section 5.2**) in writing from the physician performing the abortion attesting to the fact that in his/her professional judgment that the life of the mother would be endangered if the fetus were carried to term.

- a. If the abortion was necessary to save the life of the mother—regardless of whether the pregnancy was a result of rape or incest—the medical diagnosis and medical records must support the certification.
- b. An appropriate diagnosis code, legally induced abortion, must be indicated on the claim.
- c. The medical record documentation supporting the certification must be submitted with the claim. Documentation should include the patient's history, physical, operative report, discharge summary, ultrasound report (if applicable), consults, and pathology report must be submitted with the claim.
- d. The requirements of parental consent for a minor (see **Section 5.3**) do not apply when a medical emergency exists that so complicates the pregnancy as to require an immediate abortion.

5.1.2 Incest

The N.C. Medicaid program requires the physician performing the abortion to submit certification (see **Section 5.2**) in writing attesting to the fact that in his/her professional judgment the recipient was a victim of incest.

- a. The ICD-9-CM diagnosis code V61.8, **other specified family circumstances**, must be indicated on the claim.
- b. The medical record documentation supporting the certification must be available for review, if necessary.
- c. The requirements of parental consent for a minor (see **Section 5.3**) do not apply when a medical emergency exists that so complicates the pregnancy as to require an immediate abortion.

5.1.3 Rape

The N.C. Medicaid program requires the physician performing the abortion to submit certification (see **Section 5.2**) in writing attesting to the fact that in his/her professional judgment the recipient was a victim of rape.

- a. The ICD-9-CM diagnosis code V71.5, **rape**, must be indicated on the claim.
- b. The medical record documentation supporting the certification must be available for review, if necessary.
- c. The requirements of parental consent for a minor (see **Section 5.3**) do not apply when a medical emergency exists that so complicates the pregnancy as to require an immediate abortion.

5.2 The Abortion Statement

Providers must certify in writing that in their professional judgment a therapeutic abortion was performed for one of the reasons listed in **Section 5.1**. The primary physician or surgeon is responsible for obtaining the abortion statement. All claims will deny until the appropriate statement is on file.

The abortion statement must be printed on the provider's professional letterhead and include the following information (numbers refer to keyed items on the example statement in **Attachment B**):

1. Recipient's name
2. Recipient's address
3. The recipient's Medicaid identification number
4. The gestational age of the fetus at the time of the abortion
5. Item #5 must be checked if the therapeutic abortion was necessary to save the life of the mother
6. Item #6 must be checked if the pregnancy was a result of rape
7. Item #7 must be checked if the pregnancy was a result of incest
8. The physician's name
9. The physician's signature
10. The date of the certification was signed.

Note: If item #5 is checked, indication for the abortion necessary to save the life of the mother must be documented in the medical record. The medical record, including the Abortion Statement, patient's history, physical, operative report, discharge summary, ultrasound report (if applicable), consults, and pathology report must be submitted with the claim.

Refer to **Attachment B** for an example of the abortion statement and submittal instructions.

5.3 Parental Consent for a Minor

N.C. General Statute 90-21.7 establishes requirements for parental or judicial consent for an abortion performed on an unemancipated minor. An unemancipated minor (or minor) is defined as any person under the age of 18 who has not been married or has not been emancipated pursuant to Article 56 of Chapter 7A of the North Carolina General Statutes.

Before an abortion is performed upon an unemancipated minor, written consent must be obtained from the minor, and

- a. a parent with custody of the minor; or
- b. the legal guardian or legal custodian of the minor; or

- c. a parent with whom the minor is living; or
- d. a grandparent with whom the minor has been living for at least six months immediately preceding the date of the minor's written consent.

The pregnant minor may petition the district court judge assigned to the juvenile proceedings in the district court where the minor resides or where she is physically present on her own behalf or by guardian ad litem for a waiver of the parental consent requirement if

- a. none of the persons from whom consent must be obtained is available to the physician performing the abortion or the referring physician within a reasonable time or manner; or
- b. all of the persons from whom consent must be obtained refuse to consent to the performance of an abortion; or
- c. the minor elects not to seek consent of the person from whom consent is required.

Note: The requirements of parental consent do not apply when a medical emergency exists that so complicates the pregnancy as to require an immediate abortion (NCGS 90-21.9).

6.0 Providers Eligible to Bill for the Procedure, Product, or Service

Providers who meet Medicaid's qualifications for participation and are currently enrolled with the N.C. Medicaid program are eligible to bill for therapeutic and non-therapeutic abortions when the procedure is within the scope of their practice.

6.1 Right of Refusal

NCGS 14-45.1 indicates that a physician licensed to practice medicine in North Carolina or any nurse who shall state an objection to abortion on moral, ethical, or religious grounds, are not required to perform or participate in medical procedures that result in an abortion. The refusal of such physician to perform or participate in these medical procedures shall not be a basis for damages for such refusal, or for any disciplinary or any other recriminatory action against such physician.

NCGS 14-45.1 further indicates that a hospital or any other health care institution is not required to perform an abortion or to provide abortion services.

7.0 Additional Requirements

There are no additional requirements.

8.0 Policy Implementation/Revision Information

Original Effective Date: October 1, 1993

Revision Information:

Date	Section Revised	Change

Attachment A: Claims-Related Information

Reimbursement requires compliance with all Medicaid guidelines, including obtaining appropriate referrals for recipients enrolled in the Medicaid managed care programs.

A. Claim Type

1. Physicians enrolled in the N.C. Medicaid program bill for services on the CMS-1500 claim form.
2. Hospitals enrolled in the N.C. Medicaid program bill for services on the UB-92 claim form.

B. Billing Codes

Nontherapeutic Abortions			
Claim Type	Procedure	Diagnosis	Abortion Statement Required
Physician (CMS-1500)	59870	630	No
	59812, 59820, 59821, 59830	631, 632, 634 through 634.92, 637 through 637.92	No
Hospital (UB 92)	68.0, 69.02, 69.59	630	No
	69.02, 69.52	Any OB diagnosis except: 635 through 635.92, 638 through 638.92	Possible (medical record review will determine if statement is required)
	69.09, 69.59	<u>Any diagnosis</u> <u>except:</u> 630, 631, 632, 634 through 634.92, 635 through 635.92, 637 through 637.92, 638 through 638.9, 639 through 639.9	Possible (medical record review will determine if statement is required)
Therapeutic Abortions			
Claim Type	Procedure	Diagnosis	Abortion Statement Required
Physician (CMS-1500)	59830, 59840, 59841, 59850, 59851, 59852, 59200, 59855, 59856, 59857	635 through 635.92 638 through 638.92	Yes, with records
		V61.8	Yes
		V71.5	Yes
Hospital (UB 92)	69.01, 69.51, 74.91, 75.0, 96.49	635 through 635.92, 638 through 638.92	Yes, with records
		V61.8	Yes
		V71.5	Yes

Note:

1. Non-obstetrical procedure code 58120 cannot be billed with diagnosis codes 630, 631, 632, 634 through 634.9, 635 through 635.9, or 638 through 638.9.
2. Post-partum dilation and curettage procedure code 59160 cannot be billed with diagnosis codes 630, 631, 632, 634 through 634.9, 637-637.9, or 638 through 638.9.
3. The treatment of septic abortion, CPT procedure code 59830, can be considered a therapeutic or non-therapeutic abortion. This procedure code is covered with either therapeutic or non-therapeutic diagnosis codes. When billed with a therapeutic abortion diagnosis code (either 635 through 635.92 or 638 through 638.92), medical record documentation and abortion statement must be submitted with the claim to determine if federal guidelines are met.

C. Modifiers

Providers are required to follow applicable modifier guidelines.

D. Place of Service

Inpatient hospital
Outpatient hospital
Office

E. Reimbursement

Providers must bill their usual and customary charges.

Attachment B: The Abortion Statement

This example of the abortion statement should be recreated on the provider's professional letterhead. The exact wording in this example must be used. The abortion statement must be submitted with the claim along with medical record documentation, as appropriate.

1. Recipient's Name:

2. Address:

3. Medicaid Identification Number:

4. Gestational Age:

On the basis of my professional judgment, I have performed an abortion on the above named recipient for the following reason:

5. _____ The abortion was necessary due to a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself that would place the woman in danger of death unless an abortion was performed.

6. _____ Based on all the information available to me, I concluded that this pregnancy was the result of an act of rape.

7. _____ Based on all the information available to me, I concluded that this pregnancy was the result of an act of incest.

My signature on this statement is an attestation that the requirements were met and documentation is on file.

8. _____

Physician's Name

9. _____

Physician's Signature

10. _____

Date